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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,963	04/27/2001	Mark J. Weiser	1671-0004	8648

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/842,963

Applicant(s)

WEISER, MARK J.

Examiner

NEIL LEVY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19,23-26 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,5,13-19 & 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,6-12,20-22 and 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-19 and 23-26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

Claim 2, 3, 5, 13-19, and 23 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 3/11/03.

Claims 1, 4-12, 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishihara et al 4974725 or Hyman 4285468-Bell 5672342 in view of Warberg – 6337081 or Bell 5672342 or Novotny et al 525326.

The Ishi- bag is described in such a manner as to impute the instant permanently closed container (col 1, lines 40-45; Fig. 1-3; col 7, lines 26-37; 65; col 3, line 6) after filling. The powder carrier and liquid organoleptic perfume or repellent are not otherwise specified – any can be used. Bags are flexible, of any synthetic resin, and gas permeable-microporous. BELL specifies urine as an animal attractant (col 2, lines 30-31) able to be sealed until needed. Note col 1, lines 46-54) gland material may be added to urine. However, urine alone emits a scent (col 3, top).

HYMAN has gas permeable, liquid impermeable (col 7, lines 24-49) latex containers of the instant thickness (col 4, lines 29-49). Volatiles include fragrances, attractants, repellents (col 5, lines 25-30). The container is permanently sealed (col 5, lines 39-62; col 7, top). Carriers are solids, polymeric (col 5, lines 12-210). No animal products are disclosed, but any attractant, fragrance can be used. NOVOTNY teaches (col 7) animal products, urine, farnasene (col 1) can be used in conventional carriers after applying on pellets or granules of silicates, clays or polymers.

WARBERG provides scents as repellants and shows fibrous and granular solid materials are suitable carriers of absorbent liquid scent ingredients.

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Ishihara & Hyman (above) show the instant invention, but not specifically the instant urine and fibrous carriers and Added attractants or repellents.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize fragrant compositions, to use one of those well known in the art, as exemplified by the primary references, with selection of the equivalent carrier & odorant of any of the known perfumes, attractants & repellents known to control animals.

It would be within the purview of the artisan to select the resin suitable to provide films of suitable size and thickness to optimize the effects desired, and the use of ingredient for the functionality for which they are known to be used is not a basis for patentability. There has been no showing of criticality of selection for size or components or efficacy of the bag, carrier or scent ingredients.

All the critical elements of the instant invention are disclosed. The materials and actives are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular pest species and reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, non-obvious or unexpected results that the administration of the particular ingredients' or device components provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not a basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known methods to achieve control over animals as is well known in the art.

Applicant's arguments filed 1/3/06 have been fully considered but they are not persuasive. Applicant argues Ishihara is not permanently closed, but it is, after water is added. Applicant also declares and argues incompatibility of Ishihara with urine, but since the outer bag is permeable to gas, any ammonia generated would escape, as would also be the case in applicant's claimed urine invention.


Applicant's arguments regarding Warberg and Bell are not persuasive, as particle size and ingredients of carriers are not outside of the function of the instant invention, absent any claimed limitation of these parameters.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL LEVY
Primary Examiner
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